

Iowa General Assembly

2014 Committee Briefings

Legislative Services Agency – Legal Services Division

<https://www.legis.iowa.gov/committees/committee?groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [June 10, 2014](#) | [May 13, 2014](#)

Purpose. This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 10, 2014

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EMERGENCY RULEMAKING REQUESTS, Iowa Code §17A.4(3), (2013 Iowa Acts, ch 114 (HF 586)), provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this procedure, the committee reviews requests by agencies to adopt rules filed emergency without notice at its monthly meeting or at special meetings if necessary.

The committee gave preapproval for five emergency filings:

HUMAN SERVICES DEPARTMENT

- Expands state Child Care Assistance Program eligibility to allow a parent to work part time and go to school part time for at least 28 hours in the aggregate.
- Adds minimum foster group care payment rates.
- Changes reimbursement methodology for Community Mental Health Centers (CMHCs).
- Increases Emergency Medical Service Providers reimbursement rate.

WORKERS COMPENSATION DIVISION

- Payroll tax tables

HUMAN SERVICES DEPARTMENT, Online Training for Brain Injury (BI) Waiver Providers, 04/30/13 IAB, ARC 1442C, ADOPTED.

Background. This adopted rule revises current provisions requiring Medicaid home and community-based BI services waiver providers and each of their staff members involved in direct consumer service to have training regarding individuals who have a brain injury. The filing requires completion of a standardized training program. The training can be taken over the internet and is completed by an examination which is used only to determine what additional information the service provider might need; there is no passing grade required. Current provisions allowing for an on-the-job experience alternative are eliminated. The rule becomes effective July 1, 2014.

At the committee's May meeting, stakeholders and some committee members questioned whether the training requirements were too burdensome and whether they were necessary for all providers. Further review of the proposal was requested for the committee's June meeting.

Commentary. A department representative distributed a handout detailing changes that will be made to the training requirements in a subsequent rulemaking before the requirements become effective on January 1, 2015. The changes are in response to prior feedback received from committee members and stakeholders. These changes include a grandfathering provision, a 60-day period to complete the training, and a paper version of the training. Committee members and stakeholders expressed appreciation to the department for pursuing these changes.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, CDAC—Legal Representatives, COURTESY REVIEW.

Background. Administrative rules that went into effect January 1, 2014, prohibit legal representatives of Medicaid clients from being a paid provider of Medicaid-funded services. 2014 Iowa Acts, SF 2320, directed the department to adopt rules allowing legal representatives to be paid providers when providing services to members receiving individual consumer directed attendant care (CDAC) services or as an employee in the Consumer Choices Option (CCO) program. These amendments will allow a legal representative to be a paid provider of service when providing individual CDAC or CCO services to a member they legally represent. These amendments also set service delivery parameters for the legal representative when they are a paid provider, as required by SF 2320.

The committee reviewed this proposal prior to its filing as a notice of intended action. The notice of intended action will be subject to formal review at the committee's July meeting.

Commentary. A department representative reviewed the history of this issue, including a prior rulemaking that was terminated and subsequent legislative action in SF 2320.

Stakeholder comment was heard expressing concern about the implications of replacing "consumer-directed attendant care services" with "personal care services," as provided in SF 2320, and whether this change might lead to confusion. A department representative stated that the department would work with stakeholders in implementing this change to avoid any negative effects.

Action. No action taken.

NATURAL RESOURCE COMMISSION (NRC), Deer Hunting Season, 05/28/14 IAB, ARC 1475C, NOTICE.

Background. Following a statewide survey, the NRC annually revises the deer season, including the numbers of licenses available in the various zones.

Commentary. These revisions reflect the results of the current survey, which revealed a decline in the deer population; the amendments eliminate the January antlerless-deer-only season, reduce antlerless deer quota numbers in 72 counties by 10,000 from 2013, and restrict hunters in 27 counties to taking only antlered deer during the early muzzleloader and first shotgun seasons. These rules are designed to reduce the rate of decline in deer numbers in those counties whose deer populations have already been reduced to levels that were agreed to in 2009 by the Deer Study Advisory Group. Special deer depredation and shooting permits are available for those "hot spots" where deer populations do pose a problem.

Committee members discussed the presence of chronic wasting disease in Iowa. One case has been reported; NRC officials were confident that their sampling methodology accurately measured the prevalence of this disease.

Action. No action taken.

TREASURER OF STATE, Custodial Agreements, 05/14/14 IAB, ARC 1464C, ADOPTED.

Background. Iowa law requires the Treasurer to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. The Treasurer, in consultation with the Attorney General, is required to adopt rules requiring that public funds custodial agreements contain "any provisions necessary" to prevent loss of public funds. These agreements include any contractual arrangement in which investment advisors or investment companies act as a custodian of public funds or any security.

Commentary. This filing updates the existing provisions. The rules were initially proposed in March. The Iowa Association of School Boards expressed concerns over the local impact of these amendments. For that reason the committee imposed a 70-day delay to allow the Treasurer's office an opportunity to meet with stakeholders and resolve the issues.

Action. 70-day delay; additional review in July or August 2014.

Next Meeting. The next committee meeting will be held in Statehouse Committee Room 22, on Tuesday, July 8, 2014, beginning at 9:00 a.m. Room 22 is located behind the Senate Chamber.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

May 13, 2014

Chairperson: Senator Wally Horn

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EMERGENCY RULEMAKING REQUESTS, Iowa Code §17A.4(3), (2013 Iowa Acts, ch 114 (HF 586)), provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this procedure, the committee reviews requests by agencies to adopt rules filed emergency without notice at its monthly meeting or at special meetings if necessary.

The committee gave preapproval for two emergency filings:

- **DEPARTMENT OF REVENUE**, Property Assessment Appeal Board, 71.21(421,17A).
- **EDUCATION DEPARTMENT**, Supplementary Weighting, ch 97.

DEPARTMENT OF HUMAN SERVICES, Online Training for Brain Injury (BI) Waiver Providers, 04/30/14 IAB, ARC 1442C, ADOPTED.

Background. This adopted rule revises current provisions requiring Medicaid home and community-based BI services waiver providers and each of their staff members involved in direct consumer service to have training regarding individuals who have a brain injury. This filing requires completion of a standardized training program. It can be taken over the internet and is completed by an examination which is used only to determine what additional information the service provider might need; there is no passing grade required. Current provisions allowing for an on-the-job experience alternative are eliminated.

The rule becomes effective July 1, 2014.

Commentary. Department representatives and stakeholders emphasized that training requirements are already in place, stating the new requirements ensure standardized training.

Proponents of this change noted the need to update the current training program and the advantages of standardized training, available over the internet. Proponents stated that all service providers for brain injury clients require training to ensure they can properly assist the client. Opponents contended the new training is too detailed and demanding and will make it more difficult and expensive to attract care providers. Opponents also noted that many providers do not use or have access to the internet.

Some committee members questioned the need for this level of training for persons who provide basic housekeeping services and expressed concern that the requirement would make it more difficult to attract service providers. Other members supported the new training requirements.

Action. No action taken, further review on June 10 is anticipated.

EDUCATION DEPARTMENT, Nutritional Content Standards, 04/30/14 IAB, ARC 1432C, ADOPTED.

Background. These provisions were first adopted in 2009. That rule consists of a chart detailing school dietary standards, which include limitations on sodium, calories, fats and trans fat, sugar, and sports drinks. The standards for food and beverages in the federal rules are the minimum standards that local school districts are required to meet.

Commentary. This filing updates the existing provisions and retains the chart format. State agencies or local school districts may establish their own standards for non-program foods sold to children, as long as such standards are consistent with the federal standards.

Action. No action taken.

STATE PUBLIC DEFENDER, Claims for Services, 04/30/13 IAB, ARC 1437C, NOTICE.

Background. This proposal adds significant detail to existing rules for indigent defense contracts, and provides a number of safeguards to prevent improper billing. The noticed rules set a maximum number of aggregate hours that an attorney can bill in a day, require detailed itemized time and expense reimbursement records, establish additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarify the prohibition on other improper practices.

The proposal clearly states that claims shall only be paid for services and expenses incurred within the scope of the court appointment, and only after the service is rendered; other fees or expenses claimed will be denied. All billed time must be the actual time worked providing services to the client; estimated billing is prohibited. Billable time is limited to 12 hours a day, except for a trial or hearing, where the maximum is 16 hours.

Under the existing rules, claims that are “not reasonable or not appropriate” will be denied. Under the proposal, such claims will be “reduced by the state public defender to an amount which is not excessive.”

Non-billable services include: clerical work, including photocopying; work performed to withdraw from a case; general overhead; and preparation document or petitions related to the attorney fee claim. Travel time and mileage costs directly related to representing the client are an allowable expense.

Commentary. The State Public Defender explained that these amendments were pursued after various improper billing practices were discovered, which led to nine indigent defense contracts being cancelled.

Committee members asked what will happen to attorneys whose contracts were cancelled. The State Public Defender explained that his office has the discretion to contract with them again, but noted one is facing criminal charges. Committee members asked if time spent complying with the billing process is an allowable expense; it is not. Committee

members urged the State Public Defender to continue to pursue improvements and efficiencies in the billing process. He explained that his office is working on a standardized online claims submission system to streamline the process.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on **Tuesday, June 10, 2014**, beginning at 9:00 a.m.

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